IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.7010 of 2006
Date of Decision: 17.12.2007

Wellgrow Buildcon Pvt. Ltd. and others .....Petitioners

Vs.

State of Haryana and others ...Respondents

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CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.Adarsh Jain, Advocate for the petitioners.
Mr.Ashish Kapoor, Addl.A.G. Haryana for respondent nos.1 and 2.
Mr.A.K. Pathania, Advocate for H.S.I.D.C.

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RAJIVE BHALLA, J

This order shall dispose of CWP Nos.7010 of 2006 and 10705 of 2007, as they impugn the same acquisition proceedings on similar grounds.

The petitioners are owners of different parcels of land, measuring 482 Kanals 4 Marlas, situated in the revenue estate of Village Babra Bakipur, Tehsil and Distt.Gurgaon. The petitioners, assert that they are real Estate developers and purchased the aforementioned property for developing integrated townships etc.

The State of Haryana, issued a notification under Section 4 of

the Land Acquisition Act (hereinafter referred to as `the Act') read alongwith the provisions of Sections 17(2)(c) and 17(4) of the Act,dated 11.1.2005, proposing to acquire land for a public purpose, namely; the construction and development of an Express Highway,Phase VII connecting National Highway Nos.1,10,8 and 2. 74 Kanals 8 Marlas of land belonging to petitioner no.1 was proposed to be acquired. The aforementioned notification was followed by a declaration, issued under Section 6 of the Act, dated 31.5.2005. Thereafter, notices under Section 9 of the Act dated 21.4.2006 were issued and served, directing persons interested to appear before the Land Acquisition Collector, Gurgaon on 10.5.2006 and submit their claims.

Counsel for the petitioners contends that acquisition proceedings are liable to be quashed, as the notifications issued under Sections 4 and 6 of the Act, were not published in two daily newspapers,having circulation in the locality.

Another contention, though raised in the replication, but argued in the affirmative is that the publication of the notification under Section 4 was completed on 29.6.2005, whereas the notification under Section 6 was issued on 31.5.2005. A notification under Section 6 can only be issued after publication of the notification under Section 4.

Another argument put forth by counsel for the petitioners is that the impugned notifications do not disclose the particulars of the urgency and as a consequence the reasons for suspending the petitioners right to file objections. It is further submitted that the public purpose, namely the construction of a road, was not such as could not brook a nominal delay, of thirty days, required for inviting objections. In order to

fortify the aforementioned contention, counsel for the petitioners points out that the declaration under Section 6 was issued on 31.5.2005 i.e. more than five months after the issuance of the notification under Section 4. It is also argued that the provisions of Section 17 were invoked arbitrarily, without application of mind and in absolute disregard of the rights of the petitioners. Reliance is placed upon **Union of India V. Mukesh Hans,** (2004)8 SCC 14, **Nandeshwar Prasad and another V. The State of U.P. and others,** AIR 1964 SC 1217, **State of Punjab and Another V. Gurdial Singh and others**, AIR 1980 SC 319 **Union of India V. Krishan Lal Arneja**,(2004) 8 SCC 453 and **Om Parkash and another V. State of U.P. and Others** (1998) 6 SCC 1 to fortify the aforementioned submissions .

Counsel for the State of Haryana, on the other hand, submits that the impugned proceedings are legal and valid. The notification under Section 4 was published in the official Gazette on 11.1.2005, in the Indian Express (English) on 21.3.2005 and in Dainik Tribune (Hindi) on 21.3.2005. The declaration under Section 6 was published in the official Gazette on 31.5.2005,in the Dainik Bhaskar (Hindi) on 4.6.2005 and in the Indian Express (English) on 4.6.2005. As regards the publication in the locality, it is submitted that the notification was published in the locality by the Village Chowkidar by beating an empty tin drum. The publication in the locality is reflected in Report No.576/2 dated 29.6.2005 and was also entered in the Roznamcha Waqyati maintained in the Patwar Halka. Similarly the notification under Section 6 dated 31.5.2005 was published in the locality by the village Chowkidar vide Report No.612 dated 12.7.2005. It is, thus, submitted that while issuing the impugned notifications, the provisions of Sections 4 and 6 of the Act have been complied with in their

entirety and, therefore, contentions urged by counsel for the petitioners to the contrary are incorrect and false.

As regards the submission that publication of the notification under Section 4 was completed after the first publication of the notification under Section 6, it is submitted that this was a mere irregularity that would have no bearing on the legality of the acquisition proceedings, as urgency provisions of Section 17 were invoked and the right to file objections under Section 5-A was suspended.

As regards challenge to the urgency provisions of the Act, it is argued that the impugned notifications were issued, pursuant to directions of the Hon'ble the Supreme Court issued in Writ Petition (C) No.13029 of 1985 in **M.C. Mehta, V. Union of India,** directing the Union of India and others, to check pollution in the national capital. One such direction required the States,of the National Capital Region, to develop Eastern and Western Periphery Expressways so that transport vehicles headed for destinations other than Delhi could bye-pass the National Capital thereby reducing pollution and decongesting the roads of Delhi.

The responsibility to develop and construct the Western Periphery Expressway, which is popularly known as the Kundli-Manesar-Palwal Expressway fell upon the Government of Haryana. The Haryana State Industrial Development Corporation is designated as the nodal agency to implement this project on a build, operate and transfer basis. The Expressway starts from Kundli, Distt.Sonepat, passes through Bahadurgarh in Distt.Jhajjar, Manesar in Distt.Gurgaon and terminates near Palwal in Distt.Faridabad. The estimated cost of the project is Rs.1200.00 crores and the estimated cost of the acquired land is Rs.630.00

crores. The concessionaire has already been finalised and the work is in progress. It is further submitted that a large sum of money has already been spent on the project. The award was announced with respect to 2800 acres and compensation of Rs.476.00 crores has been deposited with the concerned Land Acquisition Collectors. In addition to the land belonging to the petitioners land in Districts Sonepat, Jhajjar, Gurgaon, Faridabad and Mewat, namely of villages Mubarikpur, Jhanjrola, Sultanpur, Shedpur Mohamadpur, Khaitawas, Patli Hazipur, Babra Bakipur, Dhana, Kasan Buslambi, Kharkhri, Mokalwas, Fakharpur, Kukrola and Fazilwas, in Tehsil and District Gurgaon has also been acquired.

It is further submitted that the need to reduce pollution in Delhi by diverting traffic from its roads, was extremely urgent and did not brook any delay. Keeping in view the aforementioned urgency, the State Government, decided to invoke the provisions of Section 17. It is, therefore, asserted that as the urgency was genuine and bonafide, the petitioners contentions be rejected.

As regards delay in the issuance of the declaration under Section 6, it is submitted that after the issuance of the notification under Section 4 on 11.1.2005, elections were announced to the Vidhan Sabha and the Model Code of Conduct came into force. The Government, therefore, decided to await the outcome of the elections, thus, leading to a delay in the issuance of the notification under Sections 6.

We have heard learned counsel for the parties, perused the paper book, as also the impugned notifications.

The first argument, advanced by counsel for the petitioners that the notifications under Sections 4 and 6 were not published, in

accordance with the provisions of Section 4(1) and Section 6(1) of the Act, is factually incorrect. Para 3 of the reply is reproduced herein below :-

> "That for the purpose of construction and development of Express Highway Phase VII connecting NationalHighway 1, 10, 8 and 2 in village Mubarikpur, Jhanjrola, Sultanpur, Shedpur Mohamadpur, Khaitawas, Patli Hazipur, Babra Bakipur, Dhana, Kasan Buslambi, Kharkhri, Mokalwas, Fakharpur, Kukrola, Fazilwas, Tehsil and District Gurgaon Notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 was issued in the official gazette of Haryana Government on dated11. Jan.2005. The notification was published in "Indian Express" (English) on 21.3.2005 and in Dainik Tribune (Hindi on 21.3.2005. Further notification under Section 6 of the Land Acquisition Act, 1894 was issued in the official gazette of Haryana government on 31.5.2005. The notification was also published in Dainik Bhaskar (Hindi) on 4.6.2005 and in Indian Express (English) on 4.6.2005."

The petitioners have not placed any material before us to doubt the correctness of these averments. It is, thus, apparent that the notifications were published in the Haryana Government Gazette, in newspapers and in the locality, as required by Sections 4 and 6 of the Act.

Another contention, namely; that before the notification under Section 4 could be published in the locality on 29.6.2005, the State proceeded to issue the notification under Section 6 on 31.5.2005, thereby,

violating the procedure prescribed under Sections 4 and 6 does not merit acceptance. The aforementioned error, was at best an irregularity that would not render acquisition proceedings illegal. Even otherwise, as the provisions of Section 17 were invoked, suspending the right to file objections, under Section 5-A, the aforementioned error was a mere irregularity, that would not, impinge upon the legality of the notifications.

In so far as the contention that the provisions of Section 17 were invoked arbitrarily, without application of mind or that the urgency was not such as could not brook a months delay, we express our inability to accept these contentions for our reasons, enumerated herein below.

As societies develop their needs and priorities change. Pollution, with its disastrous consequences for the environment and consequently for the public at large requires urgent attention. Thus, for one to argue, as has been argued by counsel for the petitioners that the construction of a road to ease pollution in Delhi and decongest its roads, was not urgent enough, to invoke the urgency provisions of Section 17, is an argument raised in ignorance. It cannot be denied that our cities, and more particularly the National Capital, are severely polluted. Roads are congested, with vehicles that belch tons of toxic fumes,compounding the urban nightmare that haunts every resident of an urban area. An endeavour to reduce pollution and decongest the roads of Delhi, in our considered opinion, was rightly viewed, by the State of Haryana, as sufficiently urgent to warrant the suspension of the provisions of Section 5-A of the Act.

Section 17 of the Act, empowers a State Government, where the situation so demands and upon an appraisal of all relevant facts, to acquire land by invoking the urgency provisions, as enumerated in Section

17 of the Act. The urgency, must, however, be real, palpable and should not brook delays that are inherent in the procedure of inviting and deciding objections, prescribed under Section 5-A of the Act. The subjective satisfaction of the Government, in invoking Section 17 must be preceded by a due application of mind, to all relevant material and particularly to the need to suspend the right to file objections.

A perusal of the notification issued under Section 4 of the Act, clearly discloses that land was sought to be acquired for construction and development of an Express Highway Phase VII, connecting National Highway Nos.1, 10, 8 and 2 in Villages Mubarikpur, Jhanjrola, Sultanpur, Shedpur Mohamadpur, Khaitawas, Patli Hazipur, Babra Bakipur, Dhana, Kasan Buslambi, Kharkhri, Mokalwas, Fakharpur, Kukrola, Fazilwas, in Tehsil and District Gurgaon. The reply, filed by Sh.Hem Raj Sharma, Joint Director of Industries and Commerce, Haryana assigns in detail reasons that led the Government to invoke the urgency provisions of Section 17 of the Act. The relevant extract from para 1 of the reply reads as follows :-

> "That growing pollution and threat to the environment in the National Capital Region had been the concern of the Central Government. In a Public Interest Litigation titled M.C. Mehta V. Union of India and others, Hon'ble Supreme Court of India passed several orders directing Union of India and others to check the pollution in the National Capital by suggesting to take number of preventive measures which include operating of CNG operated vehicles, weeding of old vehicles, restriction of goods vehicles to enter Delhi if they have destination

other than National Capital Territory of Delhi. One of the measures on which Hon'ble Apex Court gave directions to the Government of India and the States is to develop Eastern Periphery Expressway and the Western Periphery Expressway. It is pertinent to mention here that Hon'ble Supreme Court of India is regularly reviewing and monitoring the progress of the Expressways. The responsibility of developing and constructing the Western Periphery Expressway, which is also popularly known as Kundli-Manesar-Palwal Expressway, is entrusted to the Government of Haryana. The Haryana State Industries Development Corporation is developing Kundli-Manesar-Palwal Expressway. The advantage of developing Kundli-Maneswar-Palwal Expressway. The advantage of developing this Expressway is that the goods transport vehicles having destination other than National Capital Territory of Delhi should not intersect the capital at any point and these vehicles be put on fast track to save the time and energy besides reducing pollution in the National Capital of Delhi. This measure will not only decongest the traffic on Delhi road but it will also reduce pollution in the National Capital.

In view of the urgency of the proposed project and the directions issued by the Hon'ble Supreme Court, the State arrived at a conclusion that the construction of the Western Expressway could not brook

any delay. It, therefore, decided to invoke the provisions of Section 17 of the Act, thus, suspending the provisions of Section 5-A of the Act . In our considered opinion, the urgency disclosed in the notifications and enumerated in detail in the counter affidavit was sufficient to meet legal requirements set out in Section 17 of the Act and as enunciated by judicial precedent.

The contention of counsel for the petitioners that the decision was taken in a mechanical and arbitrary manner as acquisition proceedings could have been expedited without invoking the provisions of Section 17, merits rejection. A perusal of the counter affidavit discloses that all the aspects of the proposed public purpose, including the need to suspend the provisions of Section 5-A of the Act were taken into consideration by the Government, before it proceeded to issue the notification under Section 4 of the Act.

Furthermore we fail to comprehend, as to how and in what manner, the public purpose disclosed by the notifications, and the reply filed by the respondents, can be said to be not urgent enough to necessitate the invoking of urgency provisions of Section 17. The urgent need to control pollution, by diverting traffic that merely traverses Delhi, would necessarily be an urgent public purpose. For the petitioner to allege that there is no urgency for the avowed public purpose, would be ignoring the obvious. We are satisfied that the Section 17 of the Act was invoked after due application of mind and for an urgent public purpose.

The judgements relied upon by the petitioners, in our considered opinion do not aid the petitioners cause. In **Nandeshwar Prasad's case** (supra) it was held that urgency must be preceded by due

application of mind. A perusal of the impugned notifications, as also the details of the urgency enumerated in the reply and detailed herein before, disclose that the decision to invoke the provisions of Section 17 was preceded by a due and valid consideration of all relevant material.

As regards the judgement in **Union of India V. Mukesh Hans,** (2004) 8 SCC 14, there can be no quarrel with the proposition set out therein, that in addition to the existence of an urgency the facts must disclose, a compelling need to dispense with the enquiry under Section 5-A of the Act. Applying the ratio of the aforementioned precedent to the facts of the present case, we are of the firm opinion that the urgency disclosed and detailed in the counter affidavit i.e. the need to construct an express highway to reduce pollution and decongest the National Capital, as directed by the Hon'ble Supreme Court,was an urgency that necessitated the dispensing with the enquiry provided under Section 5-A. The filing of objections, the service of notices for the grant of a hearing, the process of hearing, the decision on the objections, as is well known, takes considerable time. Adopting the aforementioned procedure would in all likelihood have led to delays in the execution of the project.

The judgement in 1973 (2) SCC 337, **Munshi Singh and others V. Union of India**, need not detain us. as it merely reiterates the principles of hearing embodied in Section 5-A of the Act.

The last contention is that as there was a delay of more than 5 months, between the notifications issued under Sections 4 and 6 of the Act, the right of the landowners to file objections under Section 5-A should not have been suspended. In order to counter the aforementioned argument, counsel for the respondents, has submitted that between the issuance of the

two notifications, elections were announced to the State Assembly and the Model Code of Conduct came into force. The State Government, under a bonafide belief that it would violate the Model Code of Conduct, decided to await the outcome of elections. Though, in our considered opinion, issuance of the notification under Section 6, could not have violated the Model Code of Conduct, as the process of acquisition was already underway the State Government thought otherwise. As we find no reason to doubt its bonafides, we accept the aforementioned explanation and hold that the delay between the two notifications issued under Sections 4 and 6, would not cast a doubt upon the discretion exercised by the State of Haryana while invoking the urgency provisions as contained in Section 17 of the Act.

In view of what has been stated herein above, we are satisfied that the urgency clause contained in Section 17 was invoked by the State of Haryana after due application of mind. The exercise of the power was neither malafide nor arbitrary. Sufficient and relevant material was available to the Government to rightly record that the rights available to the petitioners under Section 5-A, were required to be suspended. The impugned notifications, therefore, do not suffer from any infraction of law or error as would merit interference. Consequently, the present petitions are dismissed, with no order as to costs.

(RAJIVE BHALLA)
JUDGE

17.12.2007
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(UMA NATH SINGH)
JUDGE